IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 784 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUNNA RAMPRASAD KAHAR - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MR ATUL H MEHTA for Appellant(s) : 1,
MR L.R. PUJARI, A.P.P. for Opponent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE MD SHAH

Date : 18/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. Being aggrieved by the judgment and order dated 24th June, 1997, passed by the Addl. Sessions Judge, Vadodara in Atrocity Case No. 63/96, this appeal has been filed by the accused. By virtue of the impugned judgment, the appellant-accused has been convicted of the offences punishable under the provisions of sec. 302 of the Indian Penal Code and sec. 135 of the Bombay Police Act and has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/- for the first named offence, whereas for the other offence, he has been sentenced to undergo rigorous imprisonment for a period of six months. The substantive sentences are ordered to run concurrently. The appellant has been however acquitted of the charges alleged against him under the provisions of sec. 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution before the trial court was that the accused, Munna Ramprasad Kahar, was having illicit relation with one woman, named, Kapila. The accused was having a flour mill in the name of Mahakali Floor Mill and was doing his business near Bhatuj temple, near Kalali Crossing. Prabhudas did not like the accused having illicit relation with Kapila and, therefore, he as well as his wife, Jashiben, the

complainant, did not permit Kapila to enter their house. Due to the said reason, the accused got annoyed and, therefore, he had a quarrel with Prabhudas.

3. On 14th March, 1996, Prabhudas had returned to his residence after doing his labour work around 7.30 pm and after having tea, he had gone for purchase of vegetables with his son, Jagdish. After some time, Jagdish came back running and informed his mother, Jashiben, that his father, Prabhudas, and the accused were quarreling near Jagnathnagar slums. Upon hearing this fact, Jashiben, alongwith her son, had rushed to Jagnathnagar slums and there she saw that the accused was giving blows to her husband, and upon seeing her approaching the spot, the accused had run away.

4. The accused had given blow by a sharp weapon like knife on the left side of the chest of Prabhudas and as a result thereof, Prabhudas had died. Thereupon the complainant had filed an FIR, and ultimately, charge had been framed against the accused (Ex. 21).

5. After considering the evidence, the trial court came to the conclusion that the prosecution had established its case and, therefore, the accused has been convicted

and sentenced as stated above.

6. Learned advocate Shri Atul H. Mehta has appeared for the appellant-accused, whereas learned APP Shri L.R. Pujari has appeared for the prosecution.

7. For coming to the conclusion that the accused had committed the above offences, the trial court had considered the evidence of three eye witnesses. Moreover, the investigating officer (PW No.8) and Dr. kishore P. Desai (PW No. 1), who had performed postmortem, were also examined.

8. According to the postmortem report (Ex. 25), the following injuries were found on the body of the deceased.

"(1) Stab wound over the left chest – 3 cm medial to left nipple in the fourth intercostal space.
Size 2.5 cm x 1 cm x cavity deep. Transversely situated, right angle is rounded and left angle is acute
(2) direction is backwards and medially.
Abrasion over left side back 3 x 1 fresh at the inferior angle of scapula."

Dr. kishore Desai (PW No.1) has submitted that the wound, which was found on the body of the deceased, could have been inflicted by a knife, which had been discovered at

the instance of the accused. The injury inflicted upon the deceased was such that in the ordinary course of nature, the said injury was sufficient to cause death. It is also pertinent to note that, according to the report given by the FSL (Ex. 42), the blood which had been found on the muddamal knife and the blood of the deceased belonged to the same group. Moreover, it was also found that the clothes of the accused, which had been recovered, were also blood stained with the blood of the deceased. Thus, the blood found on the knife and the clothes put on by the accused belonged to the blood group which the deceased had.

9. The complainant (PW No. 4), wife of the deceased, had deposed that when she was informed by her son Jagdish that the accused and the deceased were having a quarrel near the slums of Jagnathnagar, she had immediately rushed to the said place and at that time, she had found that the accused was giving knife blows to the deceased and upon seeing her, the accused had run away. Thus, the complainant is an eye witness to the said incident and her evidence has been believed by the trial court. Nothing has however come out in her cross-examination which would be adverse to the prosecution case.

10. Jagdish (PW No. 5), son of the deceased and the complainant (PW No. 4), was a 10 years old child witness but the trial court found him to be reliable and looking to the fact that he was in a position to appreciate the importance of oath, he was also examined. He had stated that alongwith the deceased, he had gone for purchase of vegetables and on the way, the accused had met and he had started abusing his father, and, therefore, he had gone to call his mother. He had seen the accused giving knife blows to his father and the accused had also given a threat to his father that if he tried to get up, he would be given another blow. According to him, another blow of the knife was also given by the accused to his father. He had informed his mother about the incident and therefore his mother Jashiben (PW No. 4) had rushed to the scene of offence and thereafter his mother had gone to the police station, whereas he had remained with his father.

11. One more witness, namely, Shri Rajesh Shivrasprasad (PW No. 6), had also been examined by the prosecution. Though he had not witnessed the incident, according to him, when he was doing some work at his residence, there was some noise outside his house and on inquiry somebody informed him that a dead body was lying there. He did

not know as to who had given blows and even he did not know as to whose dead body was there. As the said witness had turned hostile, he was cross-examined by the learned APP and in his cross-examination he had denied that he had made a statement before the police that the accused was beating the deceased and the accused was having a knife in his hand and with the said knife the accused was giving blows to the deceased and also that the accused was giving kicks to the deceased even when the deceased had fallen down.

12. If one looks at the evidence of Dr. Kishore Desai (PW No. 1) and the postmortem report (Exh. 25), it is clear that on the body of the deceased there were only two external injuries. There was one stab wound on the left side of his chest and there was one abrasion on the back side of his left shoulder. Both the wounds were ante-mortem. It is pertinent to note that upon perusal of the evidence of the Investigating Officer (PW No. 8), even when the deceased had fallen on the ground, the accused was giving him kicks. This was stated on the basis of a statement made by Rajesh Shivprasad but Rajesh Shivprasad (P.W. No. 6) did not say so in his deposition. The said fact does not appear to be correct because there appears to be contradictions between the ocular evidence

and medical evidence. Had the deceased been given blows and kicks by the accused, possibly there might have been several other injuries on his body but that does not appear to be so.

13. Upon considering the aforesaid evidences, the trial court came to the conclusion that the accused had committed the offences referred to hereinabove and, accordingly, by virtue of the impugned judgment, the accused has been convicted and sentenced.

14. Learned advocate Shri Atul H. Mehta appearing for the accused has submitted that the trial court did not appreciate the evidences properly and the trial court has erred in coming to the conclusion that the accused was guilty of the charges levelled against him under sec. 302 of the IPC as well as under sec. 135 of the Bombay Police Act.

15. It has been submitted by learned advocate Shri Mehta that Jashiben (PW No. 4) had first of all given an FIR at Atladra Police Chowky, but the said report has not been placed on record by the prosecution with an intention to keep back certain information. According to him, the FIR given at Atladra Police Chowky ought to have been

placed on record.

16. So as to appreciate the said submission, let us look at the sequence of events, which had taken place, and the efforts which the police had made to reach the scene of offence.

17. The complainant (PW No. 4) had first of all gone to Atladra Police Chowky and had informed that a person named, Munna, - the accused – was beating her husband and, therefore, immediately some help be given. Thereupon, Atladra Police Chowky had sent a wireless message to the Police Control stating that Jashiben P. Parmar had reported that a man named Munna was beating her husband Prabhudas and, therefore, a mobile van be immediately sent to Jagnathnagar, near Kalali Crossing. The said message was received by the Police Control around 9.19 pm on 14.3.1996, and therefore at 9.20 pm the Police Control asked Makarpura Police Mobile Van No. 2 to look into the aforesaid information and to inform the Police Control as to what was happening there upon reaching the said place.

18. Upon receiving the said information, Police Mobile Van No. 2 of Makarpura Police Station had reported to the

Police Control at 9.55 pm that the said van had reached Jagnathnagar slums and thereafter around 10.11 pm the said police mobile had informed the Police Control that, upon inquiry, it was found that the husband of Jashiben (PW No. 4) had received severe injuries of knife and his dead body was lying near Jagnathnagar slums and, therefore, a further request was made to the Police Control to send Makarpura Mobile Van No. 1 to the said place.

19. Upon perusal of the aforesaid evidence, which had been exhibited with consent of the learned advocate appearing for the accused, it is clear that no effort was made by the prosecution to hide any intimation given to Atladra Police Chowky by the complainant. Upon perusal of the aforesaid evidence (Exhs. 35 to 38), it can be seen that, upon receiving intimation with regard to the offence at Atladra Police Chowky, Makarpura Mobile Van No. 2 and the Police Control had done the needful to see as to what had happened to the husband of Jashiben (PW No. 4). The above fact clearly reveals that only an intimation with regard to an attack on the deceased had been given by Jashiben (PW No. 4) to Atladra Police Chowky, and no detailed FIR had been lodged at Atladra Police Chowky.

20. Upon perusal of the evidence, it appears that Jashiben (PW No. 4) was possibly not sure whether her husband, Prabhudas, had in fact died, or possibly she was under an impression that her husband was alive and, accordingly, intimation was given to Atladra Police Chowky. In pursuance thereof, the police authorities had initiated necessary action. Thus, upon perusal of all entries made in the log books maintained by Atladra Police Chowky, Makarpura Mobile Van No. 2 and the Police Control, it is clear that no FIR had been filed by the complainant at Atladra Police Chowky. A mere intimation was given at Atladra Police Chowky to the effect that her husband was being beaten by a person named Munna and in pursuance of that intimation, the said police chowky had sent a wireless message to the Police Control and in pursuance thereof, Makarpura Mobile Van No. 2 had rushed to the place of offence.

21. Possibly because of some confusion, complainant Jashiben (PW No. 4) has stated in her cross-examination that the intimation given by her at Atladra Police Chowky with regard to the incident of her husband being beaten by the accused had not only been recorded but her thumb mark was also taken on some writing. If one looks at the

messages, which had been transmitted from Atladra Police Chowky to the Police Control, it is clear that it was not known to Makarpura Police Mobile Van that the husband of the complainant (PW No. 4) had expired at that time because, at the relevant time, the complainant had only stated that her husband was being beaten by a person named Munna and she wanted help from police and, therefore, Atladra Police Chowky had immediately sent a wireless message to the Police Control.

22. Thus, in our opinion, the submission of the learned advocate that the prosecution is hiding something does not appear to be correct because, in fact, the complainant did not file an FIR at Atladra Police Chowky at the relevant time. Contemporary record of messages sent from Atladra Police Chowky to Police Control and to Makarpura Mobile Van No. 2 are on record. They are reflected in Exhs. 35 to 38, which have been admitted by the learned advocate appearing for the accused. In view of the said fact, we do not find any substance in the submission made by learned advocate Shri Mehta that the prosecution has tried to hide something. We also believe, as the trial court has believed, that the FIR had been given by the complainant (PW No. 4) at the place of the incident, where the dead body of the deceased was lying.

23. The next submission, which learned advocate Shri Mehta had made, is with regard to the motive of the accused behind commission of the offence. According to his submission, the prosecution case was that about 4 years prior to the date of the incident, the deceased had restrained Kapila from entering his house and he had also quarreled with the accused in relation to his illicit relation with Kapila. According to the learned advocate, after 4 years, all of a sudden, there was no reason for the accused to attack the deceased and,therefore, the case of the prosecution was far from truth. There was no reason or motive for the accused to murder the deceased.

24. We do not find any substance in the said submission because, though motive is hardly important looking to the incident and the evidence of the eye witnesses, who have supported the case of the prosecution, the fact is that the accused had given a knife blow, which had resulted into death of the deceased.

25. The learned advocate appearing for the accused has also submitted that there are contradictions in the evidence of complainant, Jashiben (PW No. 4). She had given different versions by stating at one place that her

husband had been killed by the accused, whereas at another place she had stated that her husband was being beaten by the accused. It has been submitted by him that looking to the contradictions in the evidence of the complainant, the case of the prosecution cannot be believed.

26. We do not find much substance in the said submission for the reason that, though at one point of time the complainant had possibly told her son that her husband, namely, Prabhudas, had been finished and thereafter, at Atladra Police Chowky, she had reported that her husband was being beaten by Munna. By saying 'finished' to her son Jagdish, the complainant might have meant that her husband had become motionless or helpless. At the time when somebody is going through stress, he/she may express something in an incoherent manner. The complainant must have been undergoing severe stress when she saw her husband's body lying in a pool of blood. Human beings, in ordinary course of behaviour, would like to sound optimistic and possibly she was not aware or she might not have been prepared to believe that her husband had died. In the circumstances, at Atladra Police Chowky she must have reported that her husband was being beaten so that she can immediately get help from police and if her

husband was alive, he can be helped and if the accused was likely to come again, her husband can be protected. These are things which one has to guess or leave to one's imagination. We do not find much contradiction in two different statements made by her at two different places, namely, before her son and before the police at Atladra Police Chowky. These two statements, though sound somewhat different, do not indicate that the complainant is not a truthful witness. What is more important is the sum and substance of the statement made by her before the police, and looking to the said fact, we are not with the learned advocate appearing for the accused that because of the contradictions which he found in the statement of the complainant, we should come to a conclusion that the prosecution could not prove its case.

27. Alternatively, he has submitted that, in fact, the accused had no intention to commit murder of the deceased. According to him, the prosecution has not explained the genesis of the quarrel which the accused had with the deceased. It has been also submitted by him that if at all there was any reason or motive for the quarrel, that was an old one because, even as per the say of the prosecution, about four years prior to the date of the incident, the deceased had prevented Kapila

from entering his house and that reason had become quite stale at the relevant time.

28. According to the learned advocate, in fact, there was some quarrel between the accused and the deceased even as per the case of the prosecution because, Jagdish (PW No. 5), son of the deceased, had stated to his mother, the complainant (PW No. 4), that the deceased and the accused were quarreling near Jagnathnagar. According to the learned advocate, it is not known even to the prosecution as to how the quarrel began. There are chances that even the deceased could have given a cause for the quarrel to start. According to him, the flour mill of the accused was quite near the residence of the deceased and the deceased must have been passing through the flour mill practically everyday as the flour mill was situated at a corner of a lane at Jagnathnagar. Had the intention of the accused been to murder the deceased, without giving any warning or saying anything, he could have murdered the deceased.

29. He has drawn our attention to the fact that only one stab wound – a solitary wound – has been found on the dead body of the deceased. Of course, he has fairly submitted that there is one more abrasion on the back of

the deceased, but that can be as a result of his falling down or caused from the knife during the scuffle which the accused had with the deceased.

30. In the aforesaid circumstances, it has been submitted by the learned advocate that, alternatively, instead of holding the accused guilty under the provisions of sec. 302 of the IPC, he be held guilty under sec. 304, Part II of the IPC because, the accused was not having any intention to cause death of the deceased. Had it been so, the accused would have given more blows by his knife to the deceased after the deceased had fallen down. Normally, a person with an intention to kill another one, would not stop by giving only one blow. He would ensure that some more blows are given so that the person receiving the blows can certainly die especially when the person receiving blows is without any weapon or is lying in a hapless condition. In the instant case, the deceased was not armed. He was lying on the ground after receiving the first blow of knife and yet another blow was not given by the accused. These circumstances, according to the learned advocate, are sufficient to show that the intention of the accused was not to cause death or to cause such bodily injuries as are likely to cause death of the deceased.

31. In the circumstances, the learned advocate appearing for the accused has prayed that a lenient view be taken, more particularly in view of the fact that the accused is not having any past criminal record and he was aged only 20 years when the crime was committed and had given only one knife blow to the deceased without an intention to kill him.

32. To substantiate his submissions, he has cited the following judgments:

1. BAGDI RAM Vs STATE OF M.P.(2004) 12 SCC 302
2. RAJENDRASINH BAHADURSINH ZALA Vs STATE OF GUJARAT, 2003 (2) G.L.H. 362

33. This is the only argument which had to be opposed by learned APP Shri LR Pujari appearing for the prosecution. It has been submitted by the learned APP that it is not necessary that in all cases, where only one blow is given and the person dies, can bring the case of the accused under the provisions of sec. 304, Part II. According to him, if the blow is given on a vital part of the body, one has to presume that the assailant had an intention and knowledge with regard to the consequences and, therefore, no leniency should be shown towards the

accused.

34. The learned APP has also cited some judgments to support his submissions:

1. RAMA SHANKAR Vs RANBIR SINGH, AIR 1996 SC 3532
2. PRAKASH HIRAMAN HINGANE Vs. STATE OF MAHARASHTRA, AIR 1998 SC 2211

35. According to the learned APP, the blow of knife had been given on the left hand side of the chest, which has been described in the postmortem report. The said injury has already been incorporated in paragraph 8 hereinabove. The aforesaid blow can definitely become fatal looking to the depth of the blow and even as per evidence of Dr. Kishore Desai (PW No 1), the blow was such, which could have caused death of a person in ordinary course of nature.

36. We have considered the rival contentions and the aforesaid judgments cited by the learned advocates. In our view, the last submission, namely, that the accused may be punished under Sec. 304, Part II, is the only submission which deserves serious consideration by us.

37. It is not in dispute that the accused and the

deceased had a quarrel before the incident which had taken place because the son of the deceased, Jagdish (PW No. 4), had reported to his mother (PW No. 4) that the deceased and the accused were having a quarrel and therefore he had requested his mother, the complainant, to rush to that place. Thus, even as per the prosecution case, it is an admitted fact that before the fatal knife blow was given by the accused to the deceased, the deceased and the accused had some quarrel. There might have been some altercation also. It is also important that the genesis of the crime or quarrel is not known even to the prosecution because the child witness, Jagdish (PW No. 5) did not say as to how the quarrel between the two had begun.

38. It is also important to know that only one knife blow had been given by the accused, and that too was given during a sudden quarrel, which landed in the chest of the deceased, then in our opinion, the offence would be punishable under section 304 Part II and not under sec. 302 of the IPC.

39. Upon perusal of the evidence, it is clear that only one stab wound was inflicted on the deceased. Of course, there is a reference to another abrasion, which is on the

back side of the deceased. Except these two wounds, there is no other injury on the body of the deceased. So far as the second abrasion is concerned, though the doctor performing the postmortem has stated that the said abrasion could have been caused because of injury from a knife, but there appears to be some doubt even in the mind of the doctor, who had performed the postmortem, because he too was not sure about it. It is possible that the said abrasion could have been caused because the deceased had fallen down as a result of the first blow, or there might have been some scuffle between the deceased and the accused and in the scuffle, he might have suffered the said abrasion, but in any case, the second injury is not as a result of any deliberate and fatal blow from the accused. Thus, we come to the conclusion that only one blow was given by the accused to the deceased and that too upon some quarrel or altercation, the genesis of which is not known even to the prosecution.

40. It is also important to note that the fateful incident had taken place neither near the residence of the deceased nor at the flour mill of the accused. The accused and the deceased had met accidentally somewhere between the aforesaid two places and some altercation had

taken place between them or some dispute had arisen at that time. This constrains us to presume that neither the accused had gone to the residence of the deceased with an intention to kill him nor the deceased had gone to the place of the accused so as to initiate some quarrel, but only because of some accidental event, they both had met at a place and due to some reason a quarrel over some past incident had arisen. This shows that the accused might not be having an intention to kill the deceased. Had it been so, the accused could have attacked the deceased from the back side and could have given several blows with the knife to the deceased, who admittedly was not having any weapon with him. The fact that only one blow of knife was given to the deceased on his chest shows that the accused and the deceased were facing each other and they had some altercations before having the quarrel as stated by Jagdish (PW No. 5), son of the deceased to the complainant.

41. Thus in the instant case, we do not find any such intention to kill, on the part of the accused. Of course, a serious offence has been committed by the accused and he must be having the knowledge that his one blow of knife can kill the deceased. So we come to the conclusion that the accused had the knowledge, but had no

intention to kill the deceased.

42. For the aforestated reasons, we consider it appropriate to convict the accused under the provisions of Section 304, Part II instead of Section 302 of the Indian Penal Code. In our aforestated view, we are supported by the following two judgments of the Hon'ble Supreme Court. In the case of Jawahar Lal and Anr Vs. State of Punjab, AIR 1983 SC 284, the accused was a young boy of 19 years who had given one blow in the chest of the deceased. The said blow was given at night and as a result thereof the person receiving the blow died. The Trial Court convicted the accused under the provisions of Section 302 of the Indian Penal Code. Being aggrieved by the judgment and order inflicting the punishment, the accused had filed an appeal before the High Court of Punjab but the said appeal had been dismissed, and, therefore, the accused had approached the Hon'ble Supreme Court. The Hon'ble Supreme Court converted the conviction under Section 302 into conviction under Section 304, Part II of the Indian Penal Code. While reducing the punishment, the Hon'ble Supreme Court had considered the fact that there was a solitary blow on the chest of the deceased and the accused did not make any effort to give the second blow. Moreover, the said

blow had been given at night and, therefore, the Hon'ble Supreme Court observed that possibly the accused might not be having an intention to cause that particular injury. In the aforestated circumstances, even though there was one blow in the chest of the deceased, the Hon'ble Supreme Court converted the conviction under Section 302 into Section 304, Part II of the Indian Penal Code.

43. In the case of Hem Raj Vs. The State (Delhi Administration, AIR 1990 SC 2552 also, a single blow of knife had been given on the chest of the deceased. Upon perusal of the evidence, the Hon'ble Supreme Court had found that the said blow was given because, all of a sudden, a quarrel had arisen between the accused and the deceased. Due to the said reason and after referring to several judgments, the Hon'ble Court held that the offence committed by the accused was punishable under Section 304, Part II of the Indian Penal Code and not under 302 of the Indian Penal Code.

44. Looking to the facts of the present case in the light of the cases referred to hereinabove, we are of the view that in the instant case also, the accused should not have been convicted for commission of an

offence under the provisions of Section 302 of the Indian Penal Code. In the instant case also, the incident had taken place around 9:00 p.m. and there also appears to be a sudden quarrel without any premeditation because the deceased was going with his son for purchasing vegetables and on the way he had met the deceased accidentally and there was some quarrel and as a result thereof, the accused, in a heat of moment, had given one knife blow to the deceased. It is also clear that there was no reason for them to have any quarrel because, for last several months, they had no quarrel. The incident, which had given rise to the said quarrel, had taken place about 4 years back when the deceased had restrained Kapila from entering his house.

45. The accused, at the time of commission of the offence, was a young man aged about 20 years and looking to his age, we feel that he might have lost his temper upon some quarrel which he and the deceased had. Once again we reiterate that it is not known as to how the quarrel had taken place. It is not the case of the prosecution that the accused had started the quarrel, because the only child witness Jagdish, prosecution witness no. 5, could only report to his mother, the complainant, Jashiben, prosecution witness no. 4, that

the deceased and the accused had some quarrel.

46. As the accused is being held guilty under the provisions of Section 304, part II, the punishment will have to be reduced. Upon considering the relevant facts, including the fact that the accused has already undergone sentence for about 9 years, we feel that punishment of rigorous imprisonment for a period of 10 years should be sufficient. We however feel that the complainant, the widow of the deceased, should also be compensated because, though there was no fault on the part of the deceased, he lost his life simply because he did not permit someone to enter his house. For the aforestated reason, we feel that in addition to the above sentence, a fine of Rs. 25,000/- should be imposed upon the accused and the said amount of fine should be paid to the complainant, Jashiben, prosecution witness no. 5, under the provisions of Section 357 of the Criminal Procedure Code. Accordingly it is ordered that an amount of Rs. 25,000/- shall be deposited by the accused before the lower Court and the lower Court is directed to pay the said amount to the complainant, Jashiben, prosecution witness no. 5 after due verification. If the said amount of fine is not paid by the accused, the accused should be sentenced for a further period of three years

simple imprisonment. Thus, we substitute the punishment of life imprisonment to rigorous Imprisonment for 10 years and fine of Rs. 25,000/-. In default of payment of fine, further simple imprisonment for three years. We thus hold the accused guilty for an offence punishable under Section 304, Part II of the Indian Penal Code instead of Section 302 of the Indian Penal Code. So far as punishment for commission of an offence under Section 135 of the Bombay Police Act is concerned, we do not disturb the findings as well as the punishment and also direct that both the punishment shall run concurrently as directed by the Trial Court.

The appeal is disposed of as partly allowed.

(ANIL R. DAVE, J.)

(M.D. SHAH, J.)